IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1857 OF 2004

Union Territory of Daman ...Petitoner

Vs.

Chiman Bana ...Respondent

Shri. S.V. Marwadi with Dipesh Mehta for the Petitioner.
Shri. Prakash Naik for the Respondent No.1.
Shri. A.S. Gadkari, A.P.P. for the Respondent No.2.

CORAM : A.S.OKA, J.
DATED : JULY 19, 2005.

P.C.:

1. Heard Shri. Marwadi appearing for the Petitioner and Shri. Naik for the Respondent. The challenge in this Petition is to the order dated 2nd July, 2004 passed by the learned Chief Judicial Magistrate, Daman and Diu at Daman by which the passport was ordered to be returned to the Respondent after making xerox attested copy thereof. The learned Judge noted the statement of the Respondent that he will not dispute his identity during the trial.

2. Shri. Marwadi, learned Counsel for the Petitioner submitted that the order has been passed without giving an appropriate opportunity of being heard to the Petitioner. He states that considering the nature of the allegations against the Respondent, the personal presence of the Respondent at the time of trial will be mandatory. He submitted that the prosecution will also need original passport possessed by the Respondent for the purposes of trial.

3. Shri. Naik, appearing for the Respondent stated that the Respondent has already acted upon the impugned order and at present he is in United Kingdom. Shri. Naik submitted that as and when learned Trial Judge directs the Respondent to remain present, the Respondent will remain present in the Trial Court.

The statement is accepted.

4. The order dated 2nd July, 2004 does not prevent the Petitioner from applying for a direction to the Respondent to remain present personally in the Trial court and produce his passport before the Trial Court. The learned Counsel for the Respondent has already stated that if such direction is given by the Trial Court, the Applicant will abide by it.

5. In view of this position, the Writ Petition is disposed of by passing the following order:

: O R D E R :

i) It will be open for the Petitioner to apply to the learned Magistrate for a direction against the Respondent to remain present personally in the Court and to produce the original passport.

ii) If such direction is issued by the Trial Court, the Respondent will remain present before the

Trial Court and will produce his original passport before the Trial Court.

iii) In case such Application is made by the Petitioner, the Petitioner will be at liberty to serve notice of the said Application on the learned Advocate appearing for the Respondent in the Trial Court.

iv) It is obvious that any such Application made by the Petitioner will be decided by the learned Trial Judge on its own merits.

v) Petition is disposed of.

vi) Parties to act upon an authenticated copy of this order.

JUDGE